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SENATE BILL NO. 474

Offered January 11, 2006

Prefiled January 11, 2006

A *BILL to amend and reenact § 38.2-1315.1 of the Code of Virginia, relating to actuarial statements provided by insurers.*

Patron—Colgan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 38.2-1315.1 of the Code of Virginia is amended and reenacted as follows:**

§ 38.2-1315.1. Actuarial statements of opinion, reports, memoranda, and summaries.

A. Effective December 31, 2004, and except as otherwise provided by this section or Article 3 (§ 38.2-3126 et seq.) of Chapter 31 of this title, every insurer doing business in the Commonwealth shall annually submit an actuarial opinion that has been prepared by an appointed actuary and that satisfies at a minimum the standards set forth in the appropriate National Association of Insurance Commissioners (NAIC) annual statement instructions.

B. Every insurer domiciled in the Commonwealth that is required to submit an actuarial opinion pursuant to subsection A of this section ~~or § 38.2-3127.1~~ shall annually submit ~~a~~ *an actuarial opinion* summary ~~of opinion or issues~~, also written by the insurer's appointed actuary; ~~and~~ *Every insurer domiciled in the Commonwealth that is required to submit an actuarial opinion pursuant to subsection A of this section or § 38.2-3127.1*, at the request of the Commission, shall submit underlying work papers and an actuarial report or memorandum that satisfies the minimum standards set forth in the appropriate NAIC annual statement instructions and complies with all additional standards or requirements established by statute or by the Commission in accordance with the provisions of this section or Article 3 (§ 38.2-3126 et seq.) of Chapter 31 of this title. A company licensed but not domiciled in the Commonwealth shall provide such summary, work papers, report, and memorandum upon request of the Commission. Any summary, work papers, report, or memorandum filed in accordance with the appropriate NAIC annual statement instructions shall be considered as a document supporting the actuarial opinion required by subsection A of this section or § 38.2-3127.1.

C. If the insurer fails to provide supporting work papers or a required report or memorandum at the request of the Commission, or the Commission determines that the work papers or report or memorandum are unacceptable, the Commission may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and to prepare supporting work papers, or a report or memorandum.

D. The appointed actuary shall not be liable for damages to any person, other than the insurer and the Commission for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the actuary.

E. An actuarial opinion provided with the annual statement in accordance with the appropriate NAIC annual statement instructions shall be open to public inspection in accordance with § 38.2-1306.

F. Documents, materials, or other information in the possession or control of the Commission that are considered an actuarial report, work papers, ~~a~~ *an actuarial opinion* summary ~~of opinion or issues~~, or an actuarial opinion report or memorandum provided in support of the opinion, and any other material provided by the insurer to the Commission in connection with the report, work papers, or summary, shall be confidential by law and privileged, shall not be subject to inspection or review by the general public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, this provision shall not be construed to limit the Commission's authority to release the documents to any actuarial board established for counseling or discipline so long as the material is required for the purpose of professional disciplinary proceedings and such board establishes procedures satisfactory to the Commission for preserving the confidentiality of the documents. Moreover, the Commission is authorized to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the Commission's official duties.

1. Neither the Commission nor any person who received documents, materials, or other information while acting under the authority of the Commission shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to this subsection.

2. In order to assist in the performance of the Commission's duties under this section, the

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59 Commission:

60 a. May share documents, material, or other information, including the confidential and privileged
61 documents, materials, or information subject to this subsection, with other state, federal, and
62 international regulatory agencies, with the NAIC, its affiliates, or subsidiaries, and with state, federal,
63 and international law enforcement authorities, provided that the recipient agrees to maintain the
64 confidentiality and privileged status of the document, material, or other information.

65 b. May receive documents, materials, or information, including otherwise confidential and privileged
66 documents, materials, or information, from the NAIC, its affiliates, or subsidiaries and from regulatory
67 and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as
68 confidential or privileged any document, material, or information received with notice or the
69 understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of
70 the document, material, or information.

71 G. The Commission may waive or modify submission requirements for a foreign insurer that has
72 been exempted by its domiciliary commissioner from filing an actuarial opinion under a substantially
73 similar law in its state of domicile. The Commission may modify requirements in any year for an
74 insurer that makes application, with good cause shown, for exemption due to the nature of business
75 written or the size and volume of business activity, or because the insurer is under supervision or an
76 order of conservation, or if the imposition of an annual filing requirement would create a financial
77 hardship.